APPENDIX.

Constitutional Provisions, Statutes and Regulations Involved.

14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"SECTION 1: . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U. S. C. SECTION 1254 (62 STAT. 928). COURTS OF APPEALS; CERTIORARI: * * *

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * *."

28 U. S. C. SECTION 1331 (72 STAT. 415). FEDERAL QUESTION; AMOUNT IN CONTROVERSY

"(a) The district courts shall have original jurisdiction of all civil sections wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

28 U. S. C. SECTION 1343. (62 STAT. 932). CIVIL RIGHTS AND ELECTIVE FRANCHISE

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .

(3) To redress the deprivation under color of any State law, statute, ordinance, regulation, custom or usage, of

any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; . . .".

42 U. S. C. Section 1983 (17 Stat. 13). Civil Action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. 1979."

New York Civil Practice Act (N. Y. L. 1920, ch. 925). Art. 2—Limitations of time

"Section 50. *Actions to be commenced within two years.* The following actions must be commenced within two years after the cause of action has accrued:

1. An action to recover damages for assault, battery, false imprisonment, malicious prosecution or malpractice."

New York General Municipal Law Section 50-e Notice of Claim (N. Y. L. 1945, ch. 694 §1; L. 1950 ch. 481)

"1. In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general corporation law, or any officer, appointee or employee thereof, the notice shall comply with the provisions of this section and it shall be given within ninety days after the claim arises."

Administrative Code of the City of New York

§394a-1.0. *Actions against the city.* a. In every action or special proceeding, for any cause whatever, prosecuted

or maintained against the city, the complaint or necessary moving papers shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims, upon which such action or special proceeding is founded, were presented to the comptroller for adjustment, and that he has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

b. An action against the city for damages for injuries to real or personal property, or for the destruction thereof, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the city, or any agency thereof, shall be commenced within one year after the cause of action therefor shall have accrued, provided that a notice of the intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed, and the value thereof, shall have been filed with the comptroller within six months after such cause of action shall have accrued.

c. An action against the city * * * for damages for personal injuries resulting from the negligence of the city * * * or any agency of the city * * *, shall be commenced within one year after the cause of action therefor shall have accrued, provided that a notice of intention to commence such action and of the time when and place where the injuries were received shall have been served in like manner as the service of a summons in the Supreme Court, within six months after such cause of action shall have accrued upon the following: * * *

2. In all cases, upon the corporation counsel and the comptroller."

Opinion and Judgment of the District Court.

This is printed at pp. 16a-20a inclusive of the appendix record filed herewith, reported in 208 F. S. 681.

Opinion of the Court of Appeals.

No. 213—October Term, 1962

(Submitted January 18, 1963 Decided January 24, 1963)

Docket No. 27848

Before:

MEDINA, WATERMAN and MOORE, Circuit Judges.

Plaintiff appeals from a judgment of the United States District Court for the Southern District of New York, Dudley B. Bonsal, Judge, dismissing his complaint in an action against a municipality under 28 U. S. C., Section 1343(3). Opinion below reported at 208 F. Supp. 681. Affirmed.

WILLIAM B. MOORE, New York, N. Y., for Plaintiff-Appellant.

LEO A. LARKIN, Corporation Counsel, New York, N. Y., and SEYMOUR B. QUEL, New York, N. Y., for Defendants-Appellee.

PER CURIAM:

Insofar as plaintiff's claim seeking monetary compensation from the municipality for his eleven year imprisonment after a conviction for manslaughter in violation of due process of law, is based upon 28 U. S. C., Section 1343(3) and 42 U. S. C., Section 1983, we affirm on the ground of lack of jurisdiction. The attempt to distinguish

Monroe v. *Pape*, 1961, 365 U. S. 167, *Egan* v. *City of Aurora*, 1961, 365 U. S. 514, and *Spampinato* v. *City of New York*, 2 Cir., 1962, — F. 2d —, decided December 4, 1962, is "patently without merit." *Bell* v. *Hood*, 1946, 327 U. S. 678, 683.

Insofar as plaintiff's claim is based, not on the Civil Rights Act, but directly upon Section 1 of the Fourteenth Amendment to the United States Constitution, we affirm on the ground that plaintiff has not stated a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See *Bell* v. *Hood*, *supra*; *Shaffer* v. *Jordan*, 9 Cir., 1954, 213 F. 2d 393, 396-97.

Affirmed.

Judgment of the Court of Appeals.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fourth day of January, one thousand nine hundred and sixty-three.
Present:

Hon. HAROLD R. MEDINA,
Hon. STERRY R. WATERMAN,
Hon. LEONARD P. MOORE,
Circuit Judges.

WILLIAM FISHER,
Plaintiff-Appellant,

v.

THE CITY OF NEW YORK,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

Order Staying Mandate.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the nineteenth day of February, one thousand nine hundred and sixty-three.

Present:

HON. HAROLD R. MEDINA,
HON. STERRY R. WATERMAN,
Circuit Judges.

WILLIAM FISHER,
Plaintiff-Appellant,

v.

THE CITY OF NEW YORK,
Defendant-Appellee.

A motion having been made herein by counsel for the appellant to stay the issuance of the mandate pending application for a writ of certiorari to the Supreme Court of the United States,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted in accordance with the provision of Rule 28(c) of the rules of this court.

A. DANIEL FUSARO,
Clerk.